

REDACTED – FOR PUBLIC INSPECTION

March 12, 2010

VIA ELECTRONIC DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: AT&T Inc. and Verizon Wireless, WT Docket No. 09-104

Dear Ms. Dortch,

In their recent *ex parte* letters,¹ Cox and the Rural Telecommunications Group (“RTG”) (collectively, the “Condition Proponents”) reargue unsupported claims of roaming harm as a result of the proposed divestiture of certain Verizon Wireless properties. These claims provide no basis for jeopardizing the substantial public interest benefits that this transaction will bring to millions of rural consumers. This transaction, which would implement a Commission-mandated divestiture of assets, will introduce AT&T as a robust competitor in 79 CMAs where it currently has little or no presence. This will greatly expand the availability of AT&T’s high-speed broadband service to consumers in 18 states, including areas where no such service has been available. This

¹ *In re Applications of AT&T Inc. & Verizon Wireless for Consent to Assign or Transfer Control of Licenses & Authorizations & Modify a Spectrum Leasing Arrangement*, WT Dkt No. 09-104, Rural Telecomms. Group, Inc., Ex Parte Presentation (filed Mar. 4, 2010), available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020393935> (“RTG Ex Parte”); Cox Commc’ns, Ex Parte Presentation (filed Feb. 12, 2010), available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020386798> (“February Cox Ex Parte”); Cox Commc’ns, Ex Parte Presentation, at slide 6 (filed Jan. 29, 2010), available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020384651> (“January Cox Ex Parte”).

expansion will also inject hundreds of millions of dollars of private investment in rural broadband infrastructure, even as it creates new jobs.²

RTG's letter supporting Cox provides all the basis the Commission needs to reject Cox's requests. As RTG explains, it raised the "same concerns" Cox now raises in seeking roaming conditions on Verizon Wireless in the Verizon Wireless/ALLTEL merger proceeding.³ RTG concedes that the Commission rejected those conditions in approving the merger, but warns the Commission, "The same mistake should not be made in the Commission's handling of the current transaction."⁴ RTG's letter drives home that Cox and RTG are doing nothing more than perpetuating RTG's claims about roaming that the Commission already rejected.⁵

In any event, the requests for conditions should be denied on the merits. Requiring AT&T to operate a CDMA network, and requiring Verizon Wireless to allow Cox and other carriers without existing roaming agreements to opt into an existing ALLTEL or Verizon roaming agreement, as Cox advocates and RTG supports, would not only hinder the realization of these public interest benefits, but also lacks any factual support and would be inconsistent with Commission precedent. The Commission thus should reject the Condition Proponents' request for roaming conditions and allow consumers to enjoy fully the public interest benefits of this transaction by approving this transaction quickly and without conditions.

1. AT&T Should Not Be Required To Operate a CDMA Network.

The Condition Proponents' CDMA roaming proposal would harm the public interest. Even though AT&T is *[Begin Confidential]* [REDACTED] *[End Confidential]* the Condition Proponents nevertheless would require AT&T to offer CDMA roaming services for five years. The Condition

² These and other public benefits are described in the Applicants' Public Interest Statement. See *In re Applications of AT&T Inc. & Verizon Wireless for Consent to Assign or Transfer Control of Licenses & Authorizations & Modify a Spectrum Leasing Arrangement*, WT Dkt No. 09-104, Description of Transaction, Public Interest Showing and Related Demonstrations, at 7-16 (filed May 22, 2009; amended June 5, 2009).

³ *RTG Ex Parte* at 1.

⁴ *Id.* at 3.

⁵ The Commission should note that, unlike RTG and other parties who filed timely petitions to deny or requests for conditions on this transaction, Cox did not bother to follow the procedures set forth in the Commission's Public Notice of the transaction for raising objections. Instead, it raised its objections for the first time in "Reply Comments" and now, seven months after the FCC issued its Public Notice, files a detailed *ex parte* letter. Cox's seriously untimely effort should not be credited or be allowed to delay the Commission's completion of its review.

Proponents would do this even though CDMA carriers already have other CDMA roaming alternatives to reach *[Begin Confidential]* *[End Confidential]* of the population in the areas involved in this transaction,⁶ and alternatives should be forthcoming in additional areas in the near future. And the Condition Proponents make this proposal notwithstanding well-established precedent to the contrary. The Commission should reject the Condition Proponents' proposal and allow consumers in the 79 CMAs affected by this transaction to be able to benefit from robust competition unburdened by the Condition Proponents' unreasonable demands.

A. A CDMA Network Condition Is Unnecessary Since Other CDMA Roaming Opportunities Will Remain.

The Condition Proponents fail to demonstrate that there will be a lack of CDMA roaming partners. They do not challenge the fact that Verizon Wireless will be a roaming option in *all* 79 divested CMAs. In the 57 CMAs that Cox has identified as of special concern, Cox itself acknowledges that it will have Verizon Wireless and at least one other roaming option, if not more, in 42 of these CMAs.⁷

Cox's denigration of its roaming options with its nationwide roaming partner Sprint⁸ and other carriers is unconvincing.⁹ Cox wrongly dismisses potential roaming partners that do not operate 3G networks on 850 MHz spectrum with ubiquitous

⁶ See *In re Applications of AT&T Inc. & Verizon Wireless for Consent to Assign or Transfer Control of Licenses & Authorizations & Modify a Spectrum Leasing Arrangement*, WT Dkt No. 09-104, Partial Response of AT&T Inc. to General Information Request Dated November 19, 2009, at 6 (filed Dec. 3, 2009), available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020351041> ("Information Request Response").

⁷ See *February Cox Ex Parte* at 3.

Moreover, RTG has it completely backwards when it suggests that the shutting down of the CDMA network will harm consumers. *RTG Ex Parte* at 2. As AT&T has explained in this proceeding, retail competition will continue to thrive in the presence of alternative CDMA carriers and others that hold licensed spectrum, which should resolve RTG's concern that consumers will be harmed as a result of alleged reductions in roaming competition. See *In re Applications of AT&T Inc. & Verizon Wireless for Consent to Assign or Transfer Control of Licenses & Authorizations & Modify a Spectrum Leasing Arrangement*, WT Dkt No. 09-104, Joint Opposition to Petitions to Deny or to Condition Consent and Reply To Comments of AT&T Inc. and Verizon Wireless at 14 (filed July 30, 2009). For the same reason, the Commission should reject RTG's request that it asserted previously in this proceeding – and repeated in its *ex parte* filing – that the Commission impose on AT&T the same roaming conditions to which Verizon Wireless and ALLTEL agreed. See *RTG Ex Parte* at 2-3.

⁸ See Press Release, Cox Commc'ns, Cox to Launch Next Generation Bundle with Wireless in 2009 (Oct. 27, 2008) ("Cox will utilize the Nationwide Sprint Network to quickly enter the market in 2009."), available at <http://cox.mediaroom.com/index.php?s=43&item=19>.

coverage.¹⁰ Cox is dissatisfied, for example, with one potential roaming partner whose “minimal” coverage includes an area about the same size as the State of Delaware,¹¹ and another potential roaming partner whose “limited” coverage includes an area about the same size as the State of Connecticut.¹² Some of Cox’s claims about coverage are also inconsistent with publicly available information.¹³

Contrary to Cox’s position,¹⁴ all spectrum holders that use CDMA technology are potential roaming partners, regardless of whether they already have built out their networks and are offering service.¹⁵ Moreover, substantial CDMA network buildout should occur in the divestiture CMAs in the next year, including by Verizon Wireless. These other CDMA carriers, and not a GSM carrier like AT&T, are the logical providers of CDMA roaming services for Cox and other carriers.

Further, most of the areas within the CMAs that Cox claims will be unserved by any CDMA carrier other than AT&T are sparsely populated rural areas and none of them includes interstate highways that are the likely location of roaming traffic.¹⁶ Thus, regardless of the actual size of this area, there is no basis for assuming that large numbers of CDMA customers will even travel to these areas, much less seek to roam on the

⁹ See *February Cox Ex Parte* at 4.

¹⁰ See *January Cox Ex Parte* at slide 6 (“many of the proposed alternatives have limited coverage, have not upgraded to EVDO, or do not have 850 MHz spectrum”).

¹¹ *Id.* (“Blanco [sic] Telephone Company identified in 2 CMAs. Coverage is minimal...”).

¹² *Id.* (“James Valley Cooperative identified in 2 CMAs. Limited coverage.”).

¹³ Cox claims that “AT&T mistakenly identifies Sprint as an alternative in the Montana and North Dakota CMAs...” *Id.* at 5. However, Sprint’s web site shows it offering non-roaming service in Montana in Great Falls, Helena, Bozeman, Billings, Butte, Missoula and surrounding areas and in North Dakota in Fargo, Grand Forks, and surrounding areas and along parts of I-29, I-94 and Rte. 281. See Sprint, Sprint Coverage Tool, <http://coverage.sprintpcs.com/IMPACT.jsp> (last visited Mar. 11, 2010). Sprint also has filed a buildout notification for KNLF223 that shows Sprint providing service in part of North Dakota. See Sprint, Demonstration of Satisfaction of Ten-Year Construction Requirement Engineering Exhibit, available at https://wireless2.fcc.gov/UlsEntry/attachments/attachmentViewRD.jsp;ATTACHMENT_S=LYBhLz9Q2q135jWn2XL4Rpw4c7SP5y1GBzGK8SvhQs5jvz8qq3SR!1922466436!1915903546?applType=search&fileKey=1463466484&attachmentKey=17804502&attachmentInd=applAttach.

¹⁴ See *February Cox Ex Parte* at 4 (noting that “Sprint does not even operate a network in a number of those CMAs.”).

¹⁵ See *Information Request Response* at 7-12.

¹⁶ See *id.* at 6-7.

divested CDMA networks. Also, given that it only provides service in three test markets,¹⁷ there are likely to be only a handful of Cox customers who will not be able to roam over Sprint's network in these areas.

B. Cox's Proposed Condition Is Inconsistent with Precedent.

"[I]t is the Commission's long-standing policy not to dictate licensees' technology choices,"¹⁸ and there is no basis for departing from this rule by requiring AT&T to operate a CDMA network. Cox's reliance on the Commission's *AT&T/Centennial Order*¹⁹ is misplaced, since the circumstances in that transaction are vastly different than those here.

In the Centennial transaction, in order to expedite approval, AT&T made a voluntary commitment to honor Centennial's roaming agreements, which AT&T was inheriting. As part of that voluntary commitment, AT&T agreed to continue to operate Centennial's CDMA network for 18 months. AT&T was able to make that commitment because of unique circumstances that permitted AT&T to continue operating Centennial's CDMA network without interfering with AT&T's plans to transition the acquired operations to GSM. AT&T had purchased Centennial's CDMA network in its entirety, and AT&T already had a well developed GSM network in most areas where Centennial had a CDMA network. There was also no deadline for transitioning Centennial's customers to GSM. There was thus no suggestion that the continued operation of the CDMA network for 18 months would interfere with the conversion of the Centennial CDMA network. As the Commission stated, "Sprint Nextel clarified it is not asking the Commission to prevent or delay AT&T's conversion of Centennial's CDMA network to GSM technology."²⁰

The circumstances in this transaction could not be more different. *[Begin Confidential]*

[REDACTED]

¹⁷ See Press Release, Cox Commc'ns, Cox Successfully Demonstrates the Delivery of Voice Calling, High Definition Video Via 4G Wireless Technology (Jan. 25, 2010) (Cox is "initially deploying wireless service using the 3G CDMA standard in Hampton Roads, Va., Orange County, Calif. and Omaha, Nebraska."), available at <http://cox.mediaroom.com/index.php?s=43&item=469>.

¹⁸ *In re Applications of Celco P'ship d/b/a Verizon Wireless & Rural Cellular Corp.*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Red. 12,463, 12,513, ¶ 114 (2008).

¹⁹ See *February Cox Ex Parte* at 8-10 (citing *In re Applications of AT&T Inc. & Centennial Commc'ns Corp.*, WT Dkt No. 08-246, Memorandum Opinion and Order, FCC 09-97 (rel. Nov. 5, 2009) ("*AT&T/Centennial Order*")).

²⁰ *AT&T/Centennial Order* ¶ 137.

[REDACTED]

[End Confidential]

Also, unlike in the Centennial transaction, *[Begin Highly Confidential]*

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[End Highly Confidential]

AT&T's challenges in this transaction are compounded by the fact that, unlike in the Centennial transaction, AT&T's network facilities are non-existent or highly limited, which means that there can be no transitioning of customers to AT&T's network, billing database, and other platforms until UMTS facilities are built from scratch. *[Begin Highly Confidential]*

[REDACTED]

[End

Highly Confidential]

The network conversion that will occur here thus will be extraordinarily complex – far more so than in the Centennial transaction. *[Begin Highly Confidential]*

[REDACTED]

[End Highly

Confidential] The result of a CDMA network requirement could be degraded customer service and a weakened competitive position, and that would undermine the very purpose of these divestitures, which is to make AT&T a vibrant successor to ALLTEL and assure a variety of choices for consumers. Rather than try to force AT&T to support a technology that is not a part of its core business to suit the needs of a few carriers in largely uninhabited areas, the Commission instead should facilitate AT&T's attempts to use scarce spectrum efficiently to bring the best possible service to millions of consumers.

[REDACTED]

2. There Is No Basis for Cox's Proposed Opt-In Condition.

Cox's additional request – which RTG supports – that Verizon Wireless be required to allow carriers that do not have existing roaming agreements with it to opt into any existing Verizon Wireless or ALLTEL roaming agreement²⁴ is meritless for multiple reasons. First, the request is untimely sought and is unrelated to this transaction. Second, Cox fails to demonstrate any evidence of harm to retail wireless competition, which the Commission has held is the lynchpin to any consideration of roaming conditions on transactions before it. Third, Cox asks the FCC to take the unprecedented and unwarranted step of mandating that a wireless carrier disclose confidential terms, conditions and rates in numerous roaming agreements for Cox and other carriers to pick and choose among, violating the rights of carriers that are not parties to this proceeding. Fourth, Cox has provided no evidence that a carrier will not be able to obtain reasonable roaming terms from Verizon Wireless as a result of this transaction. Indeed, the Commission's rules already ensure that Cox and other carriers will be able to negotiate reasonable roaming terms with Verizon Wireless. Accordingly, the proposed condition should be summarily rejected.

A. Cox's Requested Condition Is Procedurally Barred.

As Verizon Wireless detailed in its response to the FCC's General Information Request,²⁵ Cox's requested condition is procedurally defective as it is an untimely petition for reconsideration of the *Verizon Wireless/ALLTEL Merger Order* and totally lacking in any connection to the instant transaction. Despite Cox's claims to the contrary,²⁶ its alleged harm – the elimination of a possible CDMA roaming partner – is the result of the Verizon Wireless/ALLTEL transaction. Thus, while Cox is correct that the Commission deferred action on whether the public interest will be served by a specific transaction until its review of that transaction,²⁷ the elimination of ALLTEL as a possible CDMA roaming partner has nothing to do with AT&T's acquisition of these licenses. That fact was the salient concern of parties that sought roaming conditions on Verizon Wireless in the ALLTEL merger transaction. Just like Cox does now, they argued that the merger would result in Verizon Wireless being the only CDMA carrier in

²⁴ See *February Cox Ex Parte* at 3.

²⁵ See *In re Applications of AT&T Inc. & Verizon Wireless for Consent to Assign or Transfer Control of Licenses & Authorizations & Modify a Spectrum Leasing Arrangement*, WT Dkt No. 09-104, Response of Verizon Wireless to the Wireless Telecommunications Bureau's November 19, 2009 General Information Request, at 21 (filed Dec. 18, 2009), available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020353596>.

²⁶ See *February Cox Ex Parte* at 4.

²⁷ See *id.*

certain markets, and thus requested that conditions be imposed on the transaction.²⁸ Verizon Wireless voluntarily agreed to certain roaming commitments designed to address these concerns, and the Commission determined that these commitments sufficiently protected these parties.²⁹ Yet, Cox neither sought roaming-related conditions in that transaction, nor did it seek reconsideration of the *Verizon Wireless/ALLTEL Merger Order*. Under Section 405 of the Communications Act, Cox is now barred from requesting such a condition.³⁰

Thus, Cox's proposed condition is unrelated to the proposed transaction and should be rejected. The reduction in the number of CDMA roaming providers is the result of the Verizon Wireless/ALLTEL merger – which is precisely why RTG and various parties sought roaming conditions in that proceeding. The transaction now under review, by contrast, will not further reduce the number of CDMA competitors. As RTG itself notes, it raised "the same concerns" in seeking roaming conditions on Verizon

²⁸ See, e.g., *In re Applications of Cellco P'ship d/b/a Verizon Wireless & Atlantis Holdings LLC*, WT Dkt No. 08-95, Petition of MetroPCS Commc'ns, Inc. & NTELOS Inc. to Condition Consent or Deny Application at 35-38 (filed Aug. 11, 2008); Petition to Condition Transaction Approval of the Rural Carriers at 12-13 (filed Aug. 11, 2008); S.D. Telecomms. Assoc. Petition to Condition Transaction Approval at 11-12 (filed Aug. 11, 2008).

²⁹ See *In re Applications of Cellco P'ship d/b/a Verizon Wireless & Atlantis Holdings LLC*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd. 17,444, 17,525, ¶ 179 ("Verizon Wireless/ALLTEL Merger Order") ("Based on this finding that the divestitures, as well as Verizon Wireless's roaming related commitments, will protect competition at the retail level in those geographic markets, we conclude that this transaction will not alter competitive market conditions to harm consumers of mobile telephony/broadband services.").

³⁰ 47 U.S.C. § 405 ("A petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of."). RTG's support of Cox's proposed conditions and the fact that it filed a petition for reconsideration in the Verizon Wireless/ALLTEL merger proceeding do not in any manner alter the conclusion that Cox is barred from seeking conditions in *this* proceeding for the reasons stated above. See *In re Applications of Cellco P'ship d/b/a Verizon Wireless & Atlantis Holdings LLC*, WT Dkt No. 08-95, Petition for Reconsideration of the Rural Telecomms. Group, Inc. (filed Dec. 10, 2008). Indeed, RTG is inappropriately trying to raise in this separate proceeding concerns it has already raised in its petition for reconsideration of the *Verizon Wireless/ALLTEL Merger Order*. See, e.g., *RTG Ex Parte* at 2 ("Quite presciently . . . RTG remarked that '[n]ew entrants that choose to deploy CDMA with a migration path to LTE should be given the opportunity to opt into existing CDMA roaming agreements.'"). The appropriate forum for consideration of those concerns is that reconsideration proceeding rather than this divestiture proceeding.

Wireless in the Verizon Wireless/ALLTEL merger proceeding. Cox simply wants to relitigate those concerns here.³¹

B. The Condition Proponents Present No Data Demonstrating Competitive Harm.

Cox's untimely filing and RTG's *ex parte* filing in support provide no specific facts or market data demonstrating how or why the divestitures would cause harm. Cox does not even provide specific facts documenting how the divestitures would harm its own ability to obtain roaming agreements. Even if it had attempted to do so, that showing would be insufficient because, as a matter of long-standing precedent, the Commission focuses its competitive analysis on the *retail* wireless market and does not consider roaming to be a separate product market. The Commission has repeatedly ruled that its analysis of roaming must focus on whether the transaction will harm retail competition, not how it will affect individual carriers requesting roaming agreements.³² In the *Verizon Wireless/ALLTEL Merger Order*, for example, it found that Verizon Wireless' roaming commitments "will protect competition at the retail level," and that "our conclusion here is consistent with the Commission's prior findings that competition in the retail market is sufficient to protect consumers against potential harm arising from intercarrier roaming arrangements and practices."³³ The Condition Proponents provide no facts or data to even attempt to demonstrate how the divestitures will injure retail competition in the divestiture markets. For this reason alone, its requested condition on Verizon Wireless should be rejected.

C. Cox's Request Would Improperly Allow It To See Competitors' Agreements and Then Pick and Choose Among Them.

Cox demands that the Commission force Verizon Wireless to disclose to Cox and other carriers all of the Verizon Wireless and ALLTEL roaming agreements with other carriers involving the divested markets, so that Cox and other carriers can pick and choose among them. The Commission should quickly recognize how inappropriate such a demand is.

³¹ See *RTG Ex Parte* at 1.

³² See, e.g., *In re Reexamination of Roaming Obligations of Commercial Mobile Radio Serv. Providers*, Report and Order, 22 FCC Rcd. 15,817, 15,822, ¶ 13 (2007) ("2007 Roaming Order"); *In re Applications of AT&T Wireless Servs., Inc. & Cingular Wireless Corp. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd. 21,522, 21,588, ¶ 172 (2004) (basing its analysis of roaming issues on "the potential harm to consumers of mobile telephony services, rather than to mobile telephony providers").

³³ *Verizon Wireless/ALLTEL Merger Order*, 23 FCC Rcd. at 17,525, ¶ 179.

First, the Commission has explicitly rejected exactly the type of forced access to intercarrier roaming agreements that the Condition Proponents demand. In its *2007 Roaming Order*, it denied MetroPCS's request that it order disclosure of roaming agreements. The Commission found that its new automatic roaming rule was "sufficient to address disputes that may arise."³⁴ In addition, the Commission found that "disclosure of roaming agreements would enable CMRS carriers to ascertain competitors' prices which could encourage carriers to maintain artificially high rates. In a market where competition disciplines the rates, creating transparency in rates may have the effect of restricting competition and raising rates above competitive levels. "Therefore we do not find that the public interest would be served by requiring CMRS carriers to disclose their agreements or to undertake the costs required to make them public."³⁵

MetroPCS renewed its "pick and choose" opt-in request in the Verizon Wireless/ALLTEL merger, seeking a condition to require disclosure of ALLTEL's roaming agreements so it could choose the lowest rates – what the Commission described as a "most favored nation condition."³⁶ The Commission again refused to require disclosure of agreements. Yet, that is precisely what the Condition Proponents now seek here.

Second, there are obvious competitive harms that would flow from granting Cox's request. It would require Verizon Wireless to disclose to a competitor the terms of contracts Verizon Wireless and/or ALLTEL had negotiated with other carriers – many of whom are likely to be competitors of Cox themselves. The reasons the Commission rejected forced disclosure of roaming agreements before apply here as well.

Third, such a condition would put Cox and other carriers in a far *better* position than they are today, by allowing them to capitalize on the pending transaction to force another carrier to agree to accept contracts of their own choosing. The Commission has never imposed a roaming condition that forced one wireless carrier to enter into a wholly new roaming agreement with a competitor, without any ability to negotiate the terms and conditions of that agreement. It has at most preserved the terms of existing agreements for carriers to those same agreements. Cox offers no facts and no precedent to support its requested condition.

For all these reasons, Cox's "pick and choose" demand should be rejected.

³⁴ *2007 Roaming Order*, 22 FCC Rcd. at 15,840, ¶ 62.

³⁵ *Id.*

³⁶ *Verizon Wireless/ALLTEL Merger Order*, 23 FCC Rcd. at 17,521, ¶ 174.

D. The FCC's Roaming Rules Adequately Protect Against Unreasonable Roaming Terms.

The Condition Proponents' proposed condition is premised on the inaccurate assumption that a carrier will be unable to obtain reasonable roaming terms from Verizon Wireless. At no time, however, has Verizon Wireless indicated to Cox that it would not negotiate a roaming agreement with Cox, and RTG has presented no evidence that Verizon Wireless has done so for other carriers. Verizon Wireless is ready and willing to negotiate in good faith with Cox and other carriers, as it does with all of its potential roaming partners. Verizon Wireless and Cox are currently negotiating a nondisclosure agreement ("NDA") to govern their exchange of information during the negotiation of an intercarrier roaming agreement, which is standard industry practice. In fact, the parties had a call to discuss completion of the NDA as recently as March 9.

Were Verizon Wireless to refuse to negotiate in good faith, Cox has a ready remedy that obviates the need for any condition in this transaction. Section 20.12 of the Commission's rules currently requires CMRS providers to negotiate automatic roaming on reasonable and nondiscriminatory terms and conditions.³⁷ To the extent any carrier believes Verizon Wireless or any other CMRS provider has violated these requirements, it may file a complaint with the Commission.³⁸ Thus, the current rules adequately ensure Cox and other carriers will be able to obtain reasonable roaming terms.

In the Verizon Wireless/ALLTEL merger transaction, the Commission pointed to this remedy in rejecting the same request for a condition on Verizon Wireless that Cox seeks now. It found that Verizon Wireless' commitments as to existing roaming agreements were sufficient to protect against harm, and rejected the "opt-in" condition that Cox seeks here, because "[i]f a requesting carrier believes that particular acts or practices relating to roaming are unjust and unreasonable, it may file a complaint with the Commission pursuant to Section 208."³⁹ That finding is dispositive of Cox's request.

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³⁷ 47 C.F.R. § 20.12(d).

³⁸ See *2007 Roaming Order*, 22 FCC Rcd. at 15,829-31, ¶¶ 30-32 (finding that "the provisioning of automatic roaming service is subject to Section 208 which provides that complaints may be filed with the Commission against common carriers subject to the Communications Act").

³⁹ *Verizon Wireless/ALLTEL Merger Order*, 23 FCC Rcd. at 17,524, ¶ 178.

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The meritless concerns of Cox and RTG should be dismissed, and this transaction should be approved promptly and without conditions so that the resulting public benefits and competition in the 79 CMAs can be quickly and fully realized.

Sincerely,

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